

7844--A

2013-2014 Regular Sessions

I N A S S E M B L Y

June 6, 2013

Introduced by M. of A. GANTT -- read once and referred to the Committee on Transportation -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the vehicle and traffic law, in relation to automobile manufacturers and unfair practices by franchisors

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Subdivision 5 of section 415 of the vehicle and traffic law
2 is amended by adding a new paragraph b-2 to read as follows:
3 B-2. A STATEMENT INDICATING ANY INTEREST IN THE APPLICANT'S FRANCHISE
4 ENTITY BY A PERSON OR ENTITY DESCRIBED IN PARAGRAPH F OF SUBDIVISION
5 SEVEN OF THIS SECTION.
6 S 2. Paragraph f of subdivision 7 of section 415 of the vehicle and
7 traffic law, as added by chapter 490 of the laws of 2008, is amended to
8 read as follows:
9 f. EXCEPT AS PROVIDED IN PARAGRAPH (BB) OF SUBDIVISION TWO OF SECTION
10 FOUR HUNDRED SIXTY-THREE OF THIS TITLE:
11 (I) The commissioner shall not issue any certificate of registration
12 authorized by this section to any franchisor, MANUFACTURER, DISTRIBUTOR
13 BRANCH OR FACTORY BRANCH, as such [term is] TERMS ARE defined in section
14 four hundred sixty-two of this title, OR TO ANY SUBSIDIARY, AFFILIATE OR
15 CONTROLLED ENTITY THEREOF, except that the commissioner may renew such
16 certificate previously issued or otherwise approved to operate to a
17 franchisor prior to [May second, two thousand two] JULY FIRST, TWO THOU-
18 SAND SIX. NOTHING IN THIS SECTION SHALL PRECLUDE THE ESTABLISHMENT OF
19 SUCH FACILITIES NECESSARY TO CONTINUE THE ONGOING OPERATION OF ANY HOLD-
20 ER OF A CERTIFICATE OF REGISTRATION AUTHORIZED BY THIS SECTION OR OTHER-
21 WISE APPROVED TO OPERATE TO A FRANCHISOR PROVIDED SUCH ORIGINAL CERTIF-
22 ICATE OR APPROVAL WAS GRANTED PRIOR TO JULY FIRST, TWO THOUSAND SIX.
23 (II) ON OR AFTER THE EFFECTIVE DATE OF THIS SUBPARAGRAPH, THE COMMIS-
24 SIONER SHALL NOT ISSUE ANY CERTIFICATE OF REGISTRATION, OR RENEW ANY

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets
[] is old law to be omitted.

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CERTIFICATE, UNLESS THE ORIGINAL CERTIFICATE WAS ISSUED BEFORE JULY FIRST, TWO THOUSAND SIX, TO ANY MOTOR VEHICLE DEALER IN WHICH A FRANCHISOR, MANUFACTURER, DISTRIBUTOR, DISTRIBUTOR BRANCH OR FACTORY BRANCH, AS SUCH TERMS ARE DEFINED IN SECTION FOUR HUNDRED SIXTY-TWO OF THIS TITLE, OR ANY SUBSIDIARY, AFFILIATE OR CONTROLLED ENTITY THEREOF, HAS ACQUIRED, OR POSSESSES, A CONTROLLING INTEREST IN THE FRANCHISE ENTITY EXCEPT:

(1) WHEN OPERATING SUCH FRANCHISE FOR A TEMPORARY PERIOD, NOT TO EXCEED ONE YEAR, DURING THE TRANSITION FROM ONE OWNER OF THE MOTOR VEHICLE DEALERSHIP TO ANOTHER, PROVIDED, HOWEVER, THAT SUCH TEMPORARY PERIOD MAY BE EXTENDED ONCE FOR AN ADDITIONAL PERIOD NOT TO EXCEED ONE YEAR FOR GOOD CAUSE. PROVIDED THAT FOR FRANCHISORS OF HOUSE COACHES, THE PERIOD OF TEMPORARY OWNERSHIP OF A FRANCHISED HOUSE COACH DEALERSHIP MAY BE EXTENDED IN ONE YEAR INCREMENTS FOR GOOD CAUSE SHOWN, EXCEPT THAT THE AGGREGATE OF SUCH EXTENSIONS SHALL NOT EXCEED FIVE YEARS; OR

(2) WHEN OPERATING SUCH FRANCHISE TEMPORARILY UNDER A PLAN WITH AN INDEPENDENT INDIVIDUAL WHO IS OBLIGATED TO MAKE A SIGNIFICANT INVESTMENT IN THE DEALERSHIP THAT IS SUBJECT TO LOSS AND HAS AN OWNERSHIP INTEREST OR EXPECTS TO ACQUIRE FULL OWNERSHIP IN A REASONABLE PERIOD UNDER REASONABLE TERMS AND CONDITIONS, PROVIDED THAT A REASONABLE PERIOD SHALL BE PRESUMED TO NOT EXCEED EIGHT YEARS.

S 3. Subdivision 1 of section 463 of the vehicle and traffic law is amended by adding a new paragraph (e) to read as follows:

(E) TO SELL, OR SELL EXCLUSIVELY AN EXTENDED SERVICE CONTRACT, EXTENDED MAINTENANCE PLAN OR SIMILAR PRODUCT, INCLUDING, BUT NOT LIMITED TO, GAP PRODUCTS OFFERED, ENDORSED OR SPONSORED BY THE FRANCHISOR BY THE FOLLOWING MEANS:

(1) BY A STATEMENT MADE BY THE FRANCHISOR THAT FAILURE TO DO SO WILL SUBSTANTIALLY AND ADVERSELY IMPACT THE DEALER; OR

(2) BY A PROVISION IN A FRANCHISE AGREEMENT THAT THE DEALER SELL, OR SELL EXCLUSIVELY AN EXTENDED SERVICE CONTRACT, EXTENDED MAINTENANCE PLAN OR SIMILAR PRODUCT OFFERED, ENDORSED OR SPONSORED BY THE FRANCHISOR; OR

(3) BY MEASURING THE DEALER'S PERFORMANCE UNDER THE FRANCHISE BASED ON THE SALE OF EXTENDED SERVICE CONTRACTS, EXTENDED MAINTENANCE PLANS OR SIMILAR PRODUCTS OFFERED, ENDORSED OR SPONSORED BY THE MANUFACTURER OR DISTRIBUTOR; OR

(4) BY REQUIRING THE DEALER TO EXCLUSIVELY PROMOTE THE SALE OF EXTENDED SERVICE CONTRACTS, EXTENDED MAINTENANCE PLANS OR SIMILAR PRODUCTS OFFERED, ENDORSED OR SPONSORED BY THE FRANCHISOR.

NOTHING IN THIS SECTION SHALL PROHIBIT A FRANCHISOR FROM:

(A) PROVIDING INCENTIVES TO A DEALER THAT MAKES THE VOLUNTARY DECISION TO SELL OR SELL EXCLUSIVELY AN EXTENDED SERVICE CONTRACT, EXTENDED MAINTENANCE PLAN OR SIMILAR PRODUCT, INCLUDING, BUT NOT LIMITED TO, GAP PRODUCTS OFFERED, ENDORSED OR SPONSORED BY THE FRANCHISOR, OR

(B) REQUIRING THAT A DEALER THAT SELLS AN EXTENDED SERVICE CONTRACT, EXTENDED MAINTENANCE PLAN, OR SIMILAR PRODUCT THAT IS NOT OFFERED, ENDORSED OR SPONSORED BY THE FRANCHISOR, DISCLOSE TO THE CONSUMER THE DISCLOSURES REQUIRED UNDER SECTION SEVEN THOUSAND NINE HUNDRED FIVE OF THE INSURANCE LAW, AND A SEPARATE STATEMENT, ACKNOWLEDGED BY THE CONSUMER, THAT THE EXTENDED SERVICE CONTRACT, EXTENDED MAINTENANCE PLAN OR SIMILAR PRODUCT IS NOT OFFERED, ENDORSED OR SPONSORED BY THE FRANCHISOR, IF THAT IS THE CASE.

S 4. Paragraph (b) of subdivision 2 of section 463 of the vehicle and traffic law, as amended by chapter 490 of the laws of 2008, is amended to read as follows:

(b) To directly or indirectly coerce or attempt to coerce any franchised motor vehicle dealer to enter into any agreement with such fran-

chisor or officer, agent or other representative thereof, or to do any other act prejudicial to the monetary interests or property rights of said dealer by threatening to [cancel any unexpired contractual agreement existing between such franchisor and] TERMINATE said dealer. Provided, however, that good faith notice to any franchised motor vehicle dealer of said dealer's violation of any terms or provisions of such franchise shall not constitute a violation of this article.

S 5. Paragraph (c) of subdivision 2 of section 463 of the vehicle and traffic law, as amended by chapter 490 of the laws of 2008, is amended to read as follows:

(c) (1) To condition the renewal or extension of a franchise on a franchised motor vehicle dealer's substantial renovation of the dealer's place of business or on the construction, purchase, acquisition or rental of a new place of business by the franchised motor vehicle dealer unless the franchisor has advised the franchised motor vehicle dealer in writing of its intent to impose such a condition within a reasonable time prior to the effective date of the proposed date of renewal or extension (but in no case less than one hundred eighty days) and provided the franchisor demonstrates the need for such change in the place of business and the reasonableness of such demand in view of the need to service the public and the economic conditions existing in the automobile industry at the time such action would be required of the franchised motor vehicle dealer. As part of any such condition the franchisor shall agree, in writing, to supply the dealer with a reasonable quantity and mix of additional new motor vehicles which, as determined by a reasonable analysis of market conditions, are projected to meet the sales levels necessary to support the increased overhead incurred by the franchised motor vehicle dealer by reason of such renovation, construction, purchase, acquisition or rental of a new place of business.

(2) TO REQUIRE A FRANCHISED MOTOR VEHICLE DEALER TO PURCHASE GOODS, BUILDING MATERIALS, OR SERVICES FOR THE DEALER'S PLACE OF BUSINESS, INCLUDING, BUT NOT LIMITED TO, OFFICE FURNITURE, DESIGN FEATURES, FLOORING, AND WALL COVERINGS, FROM A VENDOR CHOSEN BY THE FRANCHISOR IF GOODS, BUILDING MATERIALS, OR SERVICES OF SUBSTANTIALLY SIMILAR QUALITY AND DESIGN ARE AVAILABLE FROM OTHER SOURCES, PROVIDED, HOWEVER, THAT THE GOODS OR BUILDING MATERIALS ARE NOT SUBJECT TO THE FRANCHISOR'S INTELLECTUAL PROPERTY OR TRADEMARK RIGHTS AND THE FRANCHISED MOTOR VEHICLE DEALER HAS RECEIVED THE FRANCHISOR'S APPROVAL, WHICH APPROVAL MAY NOT BE UNREASONABLY WITHHELD. NOTHING IN THIS SUBDIVISION SHALL BE CONSTRUED TO ALLOW A FRANCHISED MOTOR VEHICLE DEALER TO IMPAIR OR ELIMINATE A FRANCHISOR'S INTELLECTUAL PROPERTY OR TRADEMARK RIGHTS AND TRADE DRESS USAGE GUIDELINES, OR TO IMPAIR OTHER INTELLECTUAL PROPERTY INTERESTS OWNED OR CONTROLLED BY THE FRANCHISOR.

(3) EXCEPT AS NECESSARY TO COMPLY WITH A HEALTH OR SAFETY LAW, OR TO COMPLY WITH A TECHNOLOGY REQUIREMENT, WHICH IS NECESSARY TO SELL OR SERVICE A MOTOR VEHICLE THAT THE FRANCHISED MOTOR VEHICLE DEALER IS AUTHORIZED OR LICENSED BY THE FRANCHISOR TO SELL OR SERVICE, TO REQUIRE A FRANCHISED MOTOR VEHICLE DEALER TO CONSTRUCT A NEW DEALER FACILITY OR SUBSTANTIALLY ALTER OR REMODEL AN EXISTING DEALER FACILITY BEFORE THE DATE THAT IS TEN YEARS AFTER THE DATE THE CONSTRUCTION OF THE NEW DEALER FACILITY OR SUCH ALTERATION OR REMODELING AT THAT LOCATION WAS COMPLETED AND SHALL CONTINUE WITH ANY SUCCESSOR OWNER PROVIDED SUCH OWNER HAS BEEN DESIGNATED AND APPROVED BY THE FRANCHISOR IN THE FRANCHISE AGREEMENT, AND SUCH CONSTRUCTION, ALTERATION OR REMODELING SUBSTANTIALLY COMPLIED WITH THE FRANCHISOR'S BRAND IMAGE STANDARDS OR PLANS THAT THE FRANCHISOR

1 PROVIDED AT THE TIME THE CONSTRUCTION, ALTERATION, OR REMODELING WAS
2 COMPLETED.

3 (I) AS USED IN THIS SUBPARAGRAPH, "SUBSTANTIALLY ALTER":

4 (A) REFERS TO AN ALTERATION THAT HAS A MAJOR IMPACT ON THE ARCHITEC-
5 TURAL FEATURES, CHARACTERISTICS, OR INTEGRITY OF A STRUCTURE OR LOT; AND

6 (B) DOES NOT INCLUDE ROUTINE MAINTENANCE, SUCH AS INTERIOR PAINTING,
7 REASONABLY NECESSARY TO KEEP A DEALERSHIP FACILITY IN ATTRACTIVE CONDI-
8 TION.

9 (II) NOTHING IN THIS PARAGRAPH (C) SHALL PROHIBIT A FRANCHISOR FROM:

10 (A) CONTINUING A FACILITY IMPROVEMENT PROGRAM THAT IS IN EFFECT AS OF
11 THE EFFECTIVE DATE OF THIS PARAGRAPH WITH MORE THAN ONE FRANCHISED MOTOR
12 VEHICLE DEALER IN THE STATE OR TO RENEWING OR MODIFYING SUCH PROGRAM; OR

13 (B) PROVIDING LUMP SUM OR REGULARLY-SCHEDULED PAYMENTS TO ASSIST A
14 FRANCHISED MOTOR VEHICLE DEALER IN MAKING A FACILITY IMPROVEMENT,
15 INCLUDING CONSTRUCTION, ALTERATION OR REMODELING, OR INSTALLING SIGNAGE
16 OR A FRANCHISOR IMAGE ELEMENT;

17 (C) PROVIDING REIMBURSEMENT TO A FRANCHISED MOTOR VEHICLE DEALER ON
18 REASONABLE, WRITTEN TERMS FOR A PORTION OF THE FRANCHISED MOTOR VEHICLE
19 DEALER'S COST OF MAKING A FACILITY IMPROVEMENT, INCLUDING CONSTRUCTION,
20 ALTERATION OR REMODELING, THE PURCHASE OF GOODS, BUILDING MATERIALS OR
21 SERVICES, OR INSTALLING SIGNAGE OR A FRANCHISOR IMAGE ELEMENT.

22 (4) TO DENY A FRANCHISED MOTOR VEHICLE DEALER A FRANCHISOR IMAGE
23 ELEMENT PAYMENT, INCENTIVE OR ALLOWANCE IF THE FRANCHISED MOTOR VEHICLE
24 DEALER, WITH THE FRANCHISOR'S APPROVAL, BEGAN CONSTRUCTION, ALTERATIONS
25 OR REMODELING INTENDED TO COMPLY WITH THE FRANCHISOR'S IMAGE ELEMENT
26 PROGRAM BEFORE THE FRANCHISOR SUBSTANTIALLY CHANGED OR TERMINATED THE
27 PROGRAM PRIOR TO THE PROGRAM'S SCHEDULED ENDING DATE PROVIDED THE DEALER
28 IS OTHERWISE ELIGIBLE FOR PROGRAM PAYMENTS AND PROVIDED THAT AFTER SUCH
29 SUBSTANTIAL CHANGE OR TERMINATION, THE COMPENSATION PAYABLE TO THE DEAL-
30 ER SHALL BE LIMITED TO IMAGE ELEMENT PAYMENTS, INCENTIVES OR ALLOWANCES
31 THAT THE DEALER WOULD HAVE EARNED THROUGH PROGRAM'S SCHEDULED ENDING
32 DATE, PROVIDED THAT THE DEALER COMPLIES WITH ALL PROGRAM REQUIREMENTS,
33 AND PROVIDED, FURTHER, THAT SUCH PROGRAM OR PAYMENTS ARE NOT OTHERWISE
34 PROHIBITED BY LAW OR REGULATION.

35 (5) TO REQUIRE OR ATTEMPT TO REQUIRE A FRANCHISED MOTOR VEHICLE DEALER
36 TO ESTABLISH OR MAINTAIN EXCLUSIVE DEALERSHIP FACILITIES UNLESS JUSTI-
37 FIED BY CURRENT AND REASONABLY EXPECTED FUTURE ECONOMIC CONDITIONS
38 EXISTING IN THE DEALER'S RELEVANT MARKET AREA AT THE TIME THE REQUEST
39 FOR EXCLUSIVE FACILITIES IS MADE; PROVIDED THAT THE FOREGOING SHALL NOT
40 RESTRICT THE TERMS AND CONDITIONS OF ANY AGREEMENT FOR WHICH THE DEALER
41 HAS VOLUNTARILY ACCEPTED VALUABLE CONSIDERATION SEPARATE FROM THE FRAN-
42 CHISED MOTOR VEHICLE DEALER'S RIGHT TO SELL AND SERVICE MOTOR VEHICLES
43 FOR THE FRANCHISOR. THE FACT THAT LOCAL MARKET SHARE, FACING COMPETITIVE
44 BRAND DEALERSHIPS HAVE EXCLUSIVE DEALERSHIP FACILITIES SHALL CONSTITUTE
45 EVIDENCE THAT CURRENT ECONOMIC CONDITIONS MAY JUSTIFY THE REQUIREMENT TO
46 ESTABLISH AND MAINTAIN EXCLUSIVE DEALERSHIP FACILITIES.

47 (6) TO REQUIRE A SITE CONTROL PROVISION REGARDING THE DEALER'S PLACE
48 OF BUSINESS TO SURVIVE OR CONTINUE AFTER THE TERMINATION OF SUCH DEAL-
49 ER'S FRANCHISE IF THE TERMINATION IS DUE TO THE DISCONTINUATION OF THE
50 LINE-MAKE THAT WAS THE SUBJECT OF THE AGREEMENT.

51 S 6. Paragraph (o) of subdivision 2 of section 463 of the vehicle and
52 traffic law, as amended by chapter 490 of the laws of 2008, is amended
53 to read as follows:

54 (o) (1) Upon a termination of a franchise by a franchisor or fran-
55 chised motor vehicle dealer under this article, to refuse to accept a
56 return of new and unused current model motor vehicle inventory which has

1 been acquired from the franchisor, new and unused noncurrent model motor
2 vehicle inventory which has been acquired from the franchisor within one
3 hundred [twenty] EIGHTY days of the effective date of the termination;
4 supplies, parts, equipment, SIGNAGE, SPECIAL TOOLS, and furnishings
5 purchased from the franchisor or its approved sources [and special
6 tools]. The obligation of the franchisor, EXCEPT WITH RESPECT TO SIGNAGE
7 shall be limited to the repurchase of the above property which is unal-
8 tered and undamaged, in good and useable condition, and, in the case of
9 supplies, parts and equipment to those items which are currently listed
10 in the franchisor's supplies and parts list. IN THE CASE OF SIGNAGE,
11 THE FRANCHISOR SHALL BE OBLIGATED TO REPURCHASE ANY FRANCHISOR REQUIRED
12 SIGNAGE, PURCHASED WITHIN THE FIVE YEARS PRECEDING TERMINATION AND WHICH
13 IS IN GOOD AND USEABLE CONDITION LESS DEPRECIATION AS SET FORTH IN THE
14 INTERNAL REVENUE CODE OF ONE-FIFTEENTH OF THE INITIAL COST PER YEAR
15 STARTING THE YEAR FOLLOWING THE DEALER'S ACQUISITION OF THE ITEM.
16 Furthermore, the obligation of the franchisor to repurchase supplies
17 upon a termination, cancellation or nonrenewal by a franchised motor
18 vehicle dealer shall be limited to supplies mandated by the franchisor.
19 Parts eligible for repurchase shall include parts which have been renum-
20 bered in the current parts list but which are identical in design and
21 material to the currently numbered part. The return rights afforded the
22 franchised motor vehicle dealer under the provisions of the paragraph
23 shall be in addition to those, if any, provided in the franchise agree-
24 ment.

25 (2) The franchisor shall pay fair and reasonable compensation for the
26 above described property upon repurchase. In the case of new motor vehi-
27 cle inventory, accessories and parts, fair and reasonable compensation
28 shall in no instance be less than the net acquisition price paid by the
29 franchised motor vehicle dealer to the franchisor or its approved sourc-
30 es. Upon a termination of a franchise by a franchisor, within thirty
31 days of such termination, the franchisor shall send to the franchised
32 motor vehicle dealer instructions on the methodology by which the fran-
33 chised motor vehicle dealer must ship the above described property to
34 the franchisor; the franchisor shall then remit payment for such proper-
35 ty to the franchised motor vehicle dealer within sixty days after
36 receipt of such property.

37 (3) Upon a termination of a franchise by a franchised motor vehicle
38 dealer where the franchise consists primarily of the distribution and
39 sale of house coaches, the franchisor's repurchase obligations set forth
40 in this paragraph shall not apply.

41 (4) IN ADDITION TO ANY OTHER REQUIREMENTS OF THIS SUBDIVISION, IN THE
42 EVENT A FRANCHISOR TERMINATES A FRANCHISE DUE TO TERMINATION OF A LINE
43 MAKE, THE FRANCHISOR SHALL COMPENSATE THE DEALER FOR ANY FRANCHISOR
44 REQUIRED FACILITY CONSTRUCTION, ALTERATIONS OR REMODELING, OR
45 CONSTRUCTION, ALTERATIONS OR REMODELING REQUIRED FOR PARTICIPATION IN
46 ANY INCENTIVE PROGRAMS WHICH WERE COMPLETED BY THE DEALER WITHIN THREE
47 YEARS OF THE DATE THE FRANCHISOR ANNOUNCED THE TERMINATION OF THE LINE
48 MAKE. FOR THE PURPOSES OF THIS SECTION, COMPLETION SHALL BE DEEMED TO
49 OCCUR AT THE LATER OF THE FRANCHISOR'S FINAL APPROVAL OF THE
50 CONSTRUCTION, ALTERATIONS, OR REMODELING OR THE ISSUANCE OF A CERTIF-
51 ICATE OF OCCUPANCY. THE COMPENSATION REQUIRED UNDER THIS SECTION SHALL
52 BE IN AN AMOUNT EQUAL TO THE DEALER'S COST FOR THE FACILITY UPGRADES
53 LESS ANY ASSISTANCE PROVIDED TO THE DEALER WITHIN THREE YEARS OF THE
54 DATE THE FRANCHISOR ANNOUNCED THE TERMINATION OF THE LINE MAKE BY THE
55 MANUFACTURER OR DISTRIBUTOR, AND LESS THE AMOUNT FOR DEPRECIATION AS SET
56 FORTH IN INTERNAL REVENUE CODE OF ONE THIRTY-NINTH OF THE TOTAL INITIAL

1 COST OF SUCH CONSTRUCTION, ALTERATIONS, OR REMODELING PER YEAR STARTING
2 THE YEAR FOLLOWING THE DEALER'S COMPLETION OF THE FACILITY CONSTRUCTION,
3 ALTERATIONS, OR REMODELING.

4 (5) IN ADDITION TO THE REQUIREMENTS OF SUBPARAGRAPH FOUR OF THIS PARA-
5 GRAPH, IN THE EVENT A FRANCHISOR TERMINATES A FRANCHISE DUE TO A TERMI-
6 NATION OF A LINE MAKE, THE FRANCHISOR SHALL COMPENSATE THE DEALER IN AN
7 AMOUNT EQUAL TO THE AMOUNT REMAINING ON THE TERMINATED DEALER'S MANAGE-
8 MENT COMPUTER SYSTEM LEASE OR CONTRACT, OR ONE YEAR OF LEASE PAYMENTS,
9 WHICHEVER IS LESS IF THE DEALER MANAGEMENT COMPUTER SYSTEM WILL NO LONG-
10 ER BE UTILIZED AS A RESULT OF THE TERMINATION AND THE FRANCHISOR
11 REQUIRED THE DEALER TO UTILIZE THE PARTICULAR DEALER MANAGEMENT COMPUTER
12 SYSTEM.

13 S 7. Paragraph (z) of subdivision 2 of section 463 of the vehicle and
14 traffic law, as amended by chapter 490 of the laws of 2008, is amended
15 to read as follows:

16 (z) To [charge back or otherwise hold liable a franchised motor vehi-
17 cle dealer for sales incentives or charges related to a] REFUSE TO ALLO-
18 CATE, SELL, OR DELIVER MOTOR VEHICLES, TO CHARGE BACK OR WITHHOLD
19 PAYMENTS OR OTHER THINGS OF VALUE FOR WHICH THE FRANCHISEE IS OTHERWISE
20 ELIGIBLE, OR TO TAKE OR THREATEN TO TAKE ANY ADVERSE ACTION AGAINST A
21 FRANCHISED MOTOR VEHICLE DEALER, IN CONNECTION WITH OR AS A RESULT OF
22 ANY new motor vehicle sold by the franchised motor vehicle dealer and
23 subsequently exported, providing such dealer can demonstrate that he
24 exercised due diligence and that the sale was made in good faith [and
25 without knowledge] INCLUDING THAT THE DEALER DID NOT KNOW NOR REASONABLY
26 SHOULD HAVE KNOWN of the purchaser's intention to export the motor vehi-
27 cle[, or that such dealer reasonably relied on approvals from the fran-
28 chisor to complete a sale]. A franchised motor vehicle dealer which
29 causes a new motor vehicle to be registered in this state or in a
30 foreign state and causes to be collected the appropriate sales and use
31 tax, OR THAT REASONABLY RELIED ON A FRANCHISOR TO COMPLETE A SALE shall
32 be presumed to have exercised GOOD FAITH AND due diligence. PRIOR TO
33 TAKING AN ADVERSE ACTION, INCLUDING A CHARGE BACK, AS A RESULT OF AN
34 EXPORT, A FRANCHISOR SHALL PROVIDE WRITTEN NOTICE TO THE FRANCHISED
35 MOTOR VEHICLE DEALER OF THE ADVERSE ACTION, AND, IF A CHARGE BACK, THE
36 SPECIFIC AMOUNT OF THE CHARGE BACK, AND THE VEHICLE OR VEHICLES AT
37 ISSUE. A DEALER SHALL NOT BE LIABLE FOR THE DELIVERY OF ANY VEHICLE SOLD
38 THROUGH A FRANCHISOR'S FLEET PROGRAM FOR ANY SUCH DELIVERY IN WHICH THE
39 SALE OR LEASE WAS NOT INITIATED OR NEGOTIATED BY THE DEALER AND ITS
40 FUNCTION WAS TO PROVIDE DELIVERY ON BEHALF OF THE FRANCHISOR.

41 S 8. Subdivision 2 of section 463 of the vehicle and traffic law is
42 amended by adding three new paragraphs (ii), (jj) and (kk) to read as
43 follows:

44 (II) TO ALLOCATE NEW MOTOR VEHICLES TO A FRANCHISED MOTOR VEHICLE
45 DEALER BASED ON A PROGRAM THAT DIFFERENTIATES BETWEEN VEHICLE SALES BY A
46 FRANCHISED MOTOR VEHICLE DEALER WITHIN A TERRITORY OR GEOGRAPHIC AREA
47 ASSIGNED TO SUCH DEALER AND VEHICLE SALES OUTSIDE OF SUCH TERRITORY OR
48 GEOGRAPHIC AREA.

49 (JJ) TO UTILIZE A DISCRIMINATORY, UNREASONABLE, ARBITRARY OR UNFAIR
50 SYSTEM OF ALLOCATION OF NEW MOTOR VEHICLE INVENTORY. A FRANCHISOR SHALL
51 COMMUNICATE ITS SYSTEM OF ALLOCATION IN WRITING IN A CLEAR AND CONCISE
52 MANNER TO ALL SAME LINE-MAKE DEALERS LOCATED IN THIS STATE.

53 (KK) TO REFUSE TO DISCLOSE TO ANY FRANCHISED MOTOR VEHICLE DEALER THE
54 MANNER AND MODE OF DISTRIBUTION OF VEHICLES IN THE FRANCHISED MOTOR
55 VEHICLE DEALER'S LINE MAKE WITHIN THE STATE, AND AN EXPLANATION OF THE

1 ALLOCATION SYSTEM, INCLUDING THE METHODOLOGY USED, IN A CLEAR AND
2 COMPREHENSIBLE FORM.

3 S 9. Subdivision 1 of section 465 of the vehicle and traffic law, as
4 amended by chapter 490 of the laws of 2008, is amended to read as
5 follows:

6 1. Every franchisor shall properly fulfill any warranty agreement
7 and/or franchisor's service contract and shall compensate each of its
8 franchised motor vehicle dealers for warranty parts and labor in amounts
9 which reflect [fair and] reasonable compensation for such work. All
10 warranty claims and/or claims under a franchisor's service contract made
11 by franchised motor vehicle dealers shall be paid within thirty days
12 following their approval. For parts reimbursement, other than compo-
13 nents, systems, fixtures, appliances, furnishings, accessories and
14 features of a house coach that are designed, used and maintained prima-
15 rily for nonvehicular residential purposes, and for labor reimbursement,
16 [fair and] reasonable compensation shall not be less than the price and
17 rate charged by the franchised motor vehicle dealer for like services to
18 non-warranty and/or non-service contract customers. For purposes of this
19 section, the price and rate charged by the franchised motor vehicle
20 dealer for parts may be established by submitting to the franchisor one
21 hundred sequential nonwarranty customer-paid service repair orders or
22 the number of sequential nonwarranty customer-paid service repair orders
23 written within a ninety day period, whichever is less, covering repairs
24 made no more than one hundred eighty days before the submission, and
25 declaring the price and rate, including average markup for the fran-
26 chised motor vehicle dealer as its reimbursement rate. The reimbursement
27 rate so declared shall go into effect thirty days following the declara-
28 tion and shall be presumed to be [fair and] reasonable, however a fran-
29 chisor may rebut such presumption by showing that such rate so estab-
30 lished is [unfair and] unreasonable in light of the practices of all
31 other franchised motor vehicle dealers in the vicinity offering the same
32 line make. The franchised motor vehicle dealer shall not request a
33 change in the reimbursement rate more often than [twice] ONCE in each
34 calendar year. In establishing the labor reimbursement rate, the fran-
35 chisor shall not require a franchised motor vehicle dealer to establish
36 said rate by a methodology, or by requiring information, that is unduly
37 burdensome or time consuming to provide, including, but not limited to,
38 a transaction by transaction calculation. FOR THE PURPOSES OF THIS
39 SECTION, THE FOLLOWING PARTS OR TYPES OF REPAIRS SHALL BE EXCLUDED FROM
40 THE PARTS AND/OR LABOR CALCULATIONS AND THE FRANCHISOR'S REIMBURSEMENT
41 REQUIREMENTS UNDER THIS SECTION: (A) PARTS SOLD AT WHOLESALE; (B) TIRES;
42 (C) ROUTINE MAINTENANCE NOT COVERED UNDER ANY RETAIL CUSTOMER WARRANTY
43 SUCH AS FLUIDS, FILTERS AND BELTS NOT PROVIDED IN THE COURSE OF REPAIRS;
44 (D) VEHICLE RECONDITIONING; AND (E) BATTERIES REPLACED AS PART OF A
45 ROUTINE MAINTENANCE OPERATION. IF THE FRANCHISOR REJECTS THE DECLARATION
46 OR ATTEMPTS TO REBUT THE DECLARATION BECAUSE OF AN ERROR IN THE DEALER'S
47 SUBMISSION, THE FRANCHISOR SHALL IDENTIFY WITH SPECIFICITY THE REASON
48 FOR REJECTION AND IDENTIFY THE ERROR OR ERRORS WITHIN THE SUBMISSION. IN
49 THE EVENT THE FRANCHISOR REJECTS OR REBUTS THE DEALER'S INITIAL DECLARA-
50 TION, THE DEALER SHALL HAVE THE OPPORTUNITY, WITHIN SIXTY DAYS TO RESUB-
51 MIT THE FULL AND CORRECTED DECLARATION ADDRESSING THE ALLEGED ERROR(S)
52 IDENTIFIED BY THE FRANCHISOR. THE FRANCHISOR SHALL RESPOND WITHIN SIXTY
53 DAYS. THE ONE HUNDRED EIGHTY DAY REQUIREMENT FOR THE REPAIR ORDERS SHALL
54 BE STAYED FROM THE DATE OF INITIAL SUBMISSION. IN ANY ACTION OR PROCEED-
55 ING HELD PURSUANT TO THIS SUBDIVISION, THE FRANCHISOR SHALL HAVE THE
56 BURDEN OF PROVING THAT THE RATE DECLARED BY THE DEALER WAS UNREASONABLE

1 AS DESCRIBED IN THIS SUBDIVISION AND THAT THE PROPOSED ADJUSTMENT OF THE
2 AVERAGE PERCENTAGE MARKUP OR REJECTION OF THE SUBMISSION IS REASONABLE
3 PURSUANT TO THE PROVISIONS OF THIS SUBDIVISION.

4 S 10. Subdivisions 3, 4, 6 and 7 of section 465 of the vehicle and
5 traffic law, as added by chapter 490 of the laws of 2008, are amended to
6 read as follows:

7 3. No franchisor shall conduct an audit or charge back any warranty
8 [or] PAYMENT, OR ANY sales [incentive payment], ADVERTISING OR MARKETING
9 INCENTIVE PAYMENT ("INCENTIVE PAYMENTS") or otherwise hold a franchised
10 motor vehicle dealer liable for charges more than one year, or five
11 years in the case of fraud, after the date the franchisor made such
12 payment to the dealer, WITHOUT PROVIDING A NOTICE TO A FRANCHISED MOTOR
13 VEHICLE DEALER OF, OR A MECHANISM THAT MAKES AVAILABLE TO A FRANCHISED
14 MOTOR VEHICLE DEALER, INFORMATION REGARDING ERRORS OR ISSUES REGARDING
15 SUCH DEALER'S WARRANTY, SALES, ADVERTISING OR MARKETING INCENTIVE CLAIMS
16 THAT ARE THE SUBJECT OF THE AUDIT OR CHARGEBACK. NOTHING IN THIS SECTION
17 SHALL BE DEEMED TO GRANT A DEALER THE RIGHT TO ACCESS ANY FILE HELD BY
18 THE MANUFACTURER EVALUATING SUCH DEALER. IN CONNECTION WITH A CLAIM FOR
19 WARRANTY REIMBURSEMENTS, THE DEALER'S FAILURE TO DOCUMENT PROPERLY ONE
20 PART OF A WARRANTY REPAIR THAT CONTAINS MORE THAN ONE PART SHALL NOT BE
21 THE SOLE BASIS TO CHARGE BACK THE ENTIRE REPAIR. A MANUFACTURER SHALL
22 NOT DENY A CLAIM SUBMITTED UNDER THIS SECTION BASED SOLELY ON A DEALER'S
23 INCIDENTAL FAILURE TO COMPLY WITH A SPECIFIC CLAIM PROCESSING REQUIRE-
24 MENT, A CLERICAL ERROR, OR OTHER ADMINISTRATIVE TECHNICALITY, PROVIDED
25 THAT THE FAILURE DOES NOT CALL INTO QUESTION THE LEGITIMACY OF THE CLAIM
26 AND THAT THE DEALER CORRECTS THE CLAIM ACCORDING TO FRANCHISOR GUIDE-
27 LINES.

28 4. A franchisor shall not charge a dealer back subsequent to the
29 payment of a warranty [or], sales [incentive], ADVERTISING OR MARKETING
30 INCENTIVE claim unless a representative of the franchisor has met in
31 person at the dealership, or by telephone, with an officer or employee
32 of the dealer designated by the dealer and explained in detail the basis
33 for each of the proposed charge backs and thereafter given the dealer's
34 representative a reasonable opportunity at the meeting, or during the
35 telephone call, to explain the dealer's position relating to each of the
36 proposed charge backs. In the event the dealer was selected for audit or
37 review on the basis that some or all of the dealer's claims were viewed
38 as excessive in comparison to average, mean or aggregate data accumu-
39 lated by the franchisor, or in relation to claims submitted by a group
40 of other franchisees, the franchisor shall, at or prior to the meeting
41 or telephone call with the dealer's representative, provide the dealer
42 with a written statement containing the basis or methodology upon which
43 the dealer was selected for audit or review.

44 6. A franchisor shall not deny or charge back a sales [incentive],
45 ADVERTISING OR MARKETING INCENTIVE payment made to a dealer unless the
46 claim was materially false or fraudulent or [that] the dealer failed to
47 reasonably substantiate the claim [either] in accordance with the
48 manufacturer's reasonable procedures.

49 7. After all internal dispute resolution processes provided through
50 the franchisor have been resolved, the franchisor shall give notice to
51 the dealer of the final amount of a proposed warranty [or], sales
52 [incentive], ADVERTISING OR MARKETING INCENTIVE charge back. If the
53 dealer institutes an action pursuant to this article within thirty days
54 of receipt of such notice, the proposed charge back shall be stayed,
55 without bond, during the pendency of such action and until the final
56 judgment has been rendered in an adjudicatory proceeding or action as

1 provided in section four hundred sixty-nine of this article. THE FRAN-
2 CHISOR SHALL NOT IMPOSE THE CHARGEBACK, DEBIT THE DEALER'S ACCOUNT, OR
3 OTHERWISE SEEK TO OBTAIN ALL OR ANY PART OF THE CHARGEBACK FUNDS FROM
4 THE DEALER DURING THE THIRTY-DAY PERIOD IN WHICH THE DEALER HAS THE
5 OPPORTUNITY TO FILE AN ACTION AS SET FORTH ABOVE.

6 S 11. Severability. If any clause, sentence, paragraph, section or
7 part of this act shall be adjudged by any court of competent jurisdic-
8 tion to be invalid and after exhaustion of all further judicial review,
9 the judgment shall not affect, impair or invalidate the remainder there-
10 of, but shall be confined in its operation to the clause, sentence,
11 paragraph, section or part of this act directly involved in the contro-
12 versy in which the judgment shall have been rendered.

13 S 12. This act shall take effect immediately.